

Notice of Allowability

Application No.

10/817,169

Examiner

Douglas N. Washburn

Applicant(s)

BIENVENU ET AL.

Art Unit

2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment filed 3 December 2007.
2. ☒ The allowed claim(s) is/are 1,9-19,25-32 and 40-42.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

DETAILED ACTION
EXAMINER'S AMENDMENT

1 An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr Scott Mayhew on 9 January 2008.

The application has been amended as follows:

Please amend claims 1, 9, 10, 12, 14, 15, 18, 19, 25-29, 32 and 40 as follows:

Please amend claim 1 as follows:

1. (Currently Amended) A system adapted to determine a property of a paving-related material, said system comprising:

a hand-portable [single-location] measuring device for selectively and directly measuring the property of the paving-related material local to the hand-portable measuring device;

a computer device capable of executing a software program product and communicating with the hand-portable [single-location] measuring device, the computer device being configured to direct the hand-portable [single-location] measuring device to directly measure the property of the paving-related material according to a parameter determined by the software program product, and to receive data comprising the measured property of the paving-related material from the hand-portable [single-location] measuring device; and

a communication element operably engaged between the hand-portable [single-location] a measuring device and the computer device so as to allow communication therebetween, the communication element comprising a wireless transceiver operably engaged with each of the hand-portable [single-location]

measuring device and the computer device, and the wireless transceivers being configured to be capable of communication therebetween, the hand- portable [single-location] measuring device directly measuring the property of the paving-related material in response to the direction of the computer device received via the communication element, the communication element being configured to allow the computer device to be spaced apart from the hand- portable [single-location] measuring device, thereby allowing the computer device to be prepared, to include the parameter and to manipulate the data, in spaced apart relation with respect to the hand- portable [single-location] measuring device.

Please amend claim 9 as follows:

9. (Currently Amended) A system according to Claim 1 further comprising a locating device operably engaged with at least one of the hand- portable [single-location] measuring device and the computer device, the locating device being configured to determine a location of the at least one of the hand- portable [single-location] measuring device and the computer device.

Please amend claim 10 as follows:

10. (Currently Amended) A system according to Claim 1 further comprising a central computing system spaced apart from the computer device and the hand- portable [single-location] measuring device and configured to be capable of communicating the data with the computer device.

Please amend claim 12 as follows:

12. (Currently Amended) A system according to Claim 1 wherein the hand- portable [single-location] measuring device is configured to be capable of performing a plurality of functions and the software program product is configured to be capable of directing the hand- portable [single-location] measuring device to perform a combination of functions selected from the plurality of functions.

Please amend claim 14 as follows:

14. (Currently Amended) A system according to Claim. 1 wherein the hand- portable [single-location] measuring device is further configured to directly measure at least one of a density, a density-related parameter, and a moisture content of at least one of a soil, an aggregate, and an asphalt paving mix.

Please amend claim 15 as follows:

15. (Currently Amended) A system according to Claim 1 wherein the hand- portable [single-location] measuring device is selected from the group consisting of a nuclear density gauge, a nuclear moisture gauge, a seismic pavement analyzer, a stiffness gauge, a falling weight deflectometer, a ground penetrating radar device, a radio frequency device, an electromagnetic device, a microwave device, a surface roughness measuring device, a pavement temperature sensor, a pavement temperature measuring device, and combinations thereof.

Please amend claim 18 as follows:

18. (Currently Amended) A method of determining a property of a paving-related material, said method comprising:
preparing a computer device to execute a software program product for directing a hand- portable [single-location] measuring device to directly measure the property of the paving-related material local to the hand-portable measuring device, according to a parameter determined by the software program product, and to receive data comprising the measured property of the paving-related material from the hand- portable [single-location] measuring device;
executing the software program product; and
communicating the executed software program product from the computer device to the hand- portable [single-location] measuring device via a communication element operably engaged therebetween such that the hand- portable [single-location] measuring device directly measures the property of the paving-related material in

response thereto, the communication element comprising a wireless transceiver operably engaged with each of the hand- portable [single-location] measuring device and the computer device, and the wireless transceivers being configured to be capable of communication therebetween, the communication element being configured to allow the computer device to be spaced apart from the hand- portable [single-location] measuring device such that the computer device can be prepared, in spaced apart relation with respect to the hand- portable [single-location] measuring device, to include the parameter and to manipulate the data.

Please amend claim 19 as follows:

19. (Currently Amended) A method according to Claim 18 communicating the data comprising the measured property of the paving-related material from the hand- portable [single-location] measuring device to the computer device via the communication element.

Please amend claim 25 as follows:

25. (Currently Amended) A method according to Claim 18 further comprising determining a location of at least one of the hand- portable [single-location] measuring device and the computer device with a locating device operably engaged with at least one of the hand- portable [single-location] measuring device and the computer device.

Please amend claim 26 as follows:

26. (Currently Amended) A method according to Claim 19 further comprising communicating at least one of the data and a modification of the software program product between the computer device and a central computing system spaced apart from the computer device and the hand- portable [single-location] measuring device.

Please amend claim 27 as follows:

27. (Currently Amended) A method according to Claim 18 wherein the hand-portable [single-location] measuring device is configured to be capable of performing a plurality of functions and preparing the computer device to execute the software program product further comprises preparing the computer device to execute the software program product, the software program product being capable of directing the hand-portable [single-location] measuring device to perform a combination of functions selected from the plurality of functions and at least one function in the plurality of functions being configured to determine the parameter used to measure the property of the material.

Please amend claim 28 as follows:

28. (Currently Amended) A method according to Claim 18 wherein preparing a computer device further comprises preparing a computer device to execute a software program product for directing a hand-portable [single-location] measuring device to directly measure at least one of a density, a density-related parameter, and a moisture content of at least one of a soil, an aggregate, and an asphalt paving mix.

Please amend claim 29 as follows:

29. (Currently Amended) A method according to Claim 18 wherein preparing a computer device further comprises preparing a computer device to execute a software program product for directing a hand-portable [single-location] measuring device comprising at least one of a nuclear density gauge, a nuclear moisture gauge, a seismic pavement analyzer, a stiffness gauge, a falling weight deflectometer, a ground penetrating radar device, a radio frequency device, an electromagnetic device, a microwave device, a surface roughness measuring device, a pavement temperature sensor, a pavement temperature measuring device, to directly measure the property of the paving-related material.

Please amend claim 32 as follows:

32. (Currently Amended) A system adapted to cooperate with a hand-portable [single-location] measuring device to selectively and directly measure a property of a paving-related material local to the hand- portable device, said system comprising: a computer device capable of executing a software program product and communicating with the hand-portable [single-location] measuring device, the computer device being configured to direct the hand-portable [single-location] measuring device to directly measure the property of the paving-related material according to a parameter determined by the software program product, and to receive data comprising the measured property of the paving-related material from the hand-portable single-location, measuring device; and a communication element operably engaged between the hand-portable [single-location] measuring device and the computer device so as to allow communication therebetween, the communication element comprising a wireless transceiver operably engaged with each of the hand-portable [single-location] measuring device and the computer device, and the wireless transceivers being configured to be capable of communication therebetween, the hand-portable [single-location] measuring device directly measuring the property of the paving-related material in response to the direction of the computer device via the communication element, the communication element being configured to allow the computer device to be spaced apart from the hand-portable [single-location] measuring device, thereby allowing the computer device to be prepared, to include the parameter and to manipulate the data, in spaced apart relation with respect to the hand-portable [single-location] measuring device.

Please amend claim 40 as follows:

40. (Currently Amended) A system according to Claim 32 further comprising a locating device operably engaged with at least one of the hand-portable [single-location] measuring device and the computer device, the locating device being configured to determine a location of the at least one of the hand-portable [single-location] measuring device and the computer device.

Allowable Subject Matter

2 Claims 1, 9-19, 25-32 and 40-42 are allowed.

The following is an examiner's statement of reasons for allowance:

Claim 1 recites, in part, “, the **hand-portable measuring device directly measuring the property of the paving-related material in response to the direction of the computer device** received via the communication element, the communication element being configured to allow the computer device to be spaced apart from the hand-portable measuring device, thereby allowing the computer device to be prepared, to include the parameter and to manipulate the data, in spaced apart relation with respect to the hand-portable measuring device”. This feature **in combination with the remaining claimed structure** avoids the prior art of record.

Claims 9-17 depend from claim 1.

Claim 18 recites, in part, “communicating the executed software program product from the computer device to the hand-portable measuring device via a communication element operably engaged therebetween such that **the hand-portable measuring device directly measures the property of the paving-related material**”. This feature **in combination with the remaining claimed structure** avoids the prior art of record.

Claims 19 and 25-31 depend from claim 18.

Claim 32 recites, in part, **“the hand-portable measuring device directly measuring the property of the paving-related material** in response to the direction of the computer device via the communication element.”. This feature **in combination with the remaining claimed structure** avoids the prior art of record.

Claims 40-42 depend from claim 32.

It is these limitations, which are not found, taught or suggested in the prior art of record, and are recited in the claimed combination that makes these claims allowable over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Conclusion

3 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas N. Washburn whose telephone number is (571) 272-2284. The examiner can normally be reached on Monday through Thursday 6:30 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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DNW



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